Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 63 of 2004

Harish Chandra Bhatt,
S/O Sri N.B. Bhatt,
Village Haripur Naik,
P.O. Haripur Naik,
Haldwani, District Nainital … **Appellant.**

Versus

1. Sri Pushkar Singh Queera,
   S/O Shiv Singh Queera,
   Village Devpur Deupa, Lamachaur,
   Tahsil Haldwani, District Nainital.
2. New India Assurance Co. Ltd.,
   Through Branch Manager,
   Branch Office, Khan Chand Market,
   Haldwani, District Nainital.

… **Respondents.**

Sri P.C. Kandpal, Advocate, learned counsel for the appellant.
Sri T.A. Khan, Advocate, learned counsel for the respondents.

Coram : Hon'ble Irshad Hussain, J.
Hon'ble B.S.Verma, J.

Date December 14, 2004.

(Per Hon'ble B.S.Verma, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award, dated 07-11-2003 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Nainital **(*for short the Tribunal*)** in Claim Petition No. 91 of 2003, whereby the learned Tribunal awarded compensation of Rs. 50,717/- along with interest @ 7% per annum. Aggrieved, the claimant has come up in appeal for enhancement of compensation mainly on the ground that the compensation awarded was inadequate.

Relevant facts are that claimant Harish Chandra Bhatt was returning to his house from Kusumkhera (Haldwani) on bicycle

on 25-11-2002 at about 9:30 a.m. Near D.A.V. School, a Maruti Car No. UP 02-7038 driven rashly and negligently by its driver came from the front side and heavily dashed the claimant. According to the claimant, he was brought to Joshi Bone Hospital, where he remained admitted for 14 days. He was operated upon and steel rod was inserted in his leg for two years. He has not recovered fully. Report of accident was lodged on 26.11.2002 by his father. The claimant incurred more than Rs. 50,000/- and he became permanently disabled. Claimant's business also paralyzed, which he started after taking loan, hence claim petition was filed for compensation or Rs. 7,00,000/-.

Owner of the offending car filed his written statement alleging therein that the car was duly insured with New India Assurance Company and that the Maruti Car was being driven by a skilled person having a valid driving licence.

The insurer of the car resisted the claim petition alleging that no information of the accident was given to it; that the driver was not holding a valid driving licence and that the compensation claimed was excessive.

Learned Tribunal framed relevant Issues. It held that the accident occurred due to rash and negligent driving by the driver of the offending car and that the car was duly insured with New India Assurance Company. Ultimately, compensation of Rs. 50,717/- was awarded by the Tribunal.

In support of the appeal, it was contended on behalf of the appellant that the claimant incurred Rs. 1,00,000/- towards medical treatment and his business was in the meantime closed on account to his having been confined to bed but the learned Tribunal failed to appreciate the evidence properly.

The point for determination before us is whether the quantum of compensation was properly assessed or not. In the claim petition, the appellant mentioned that he incurred more than Rs. 50,000/- towards medical expenses; that he was operated upon and steel rod was inserted inside the leg for two years and that his business was put to closure on account of injuries sustained by him. The claimant mentioned his monthly income at Rs. 4,500/- per month. Claimant examined himself as P.W.1. In his testimony, he testified bills and vouchers of Rs. 34,217/- . He however stated that amount of 50-60 thousand will be required to remove the steel rod put in his leg. He also stated that his business was badly affected for 3-4 month which he started by taking loan of Rs. 90,000/- from the bank and that he used to earn Rs. 5000-6000/- from the electrical and fabrication work. The claimant led no documentary evidence in respect of his business or taking of loan from the Bank. Accident occurred on 25.11.2002 and the claim petition was filed on 14-5-2003. The most important circumstance is that the claimant has not filed any disability certificate. The Tribunal awarded sums of Rs. 34,217/- towards medical expenses, Rs. 5,000/- towards damages on account of grievous injuries and Rs. 10,000/- towards future expenses. Even if the averment about income of Rs. 4,500/- per month is accepted, then the claimant may claim compensation for loss of income for a maximum period of three months, because he was not hospitalized for a long period. Therefore, taking that the income of the claimant was affected for three months, in our opinion, he is entitled to get Rs. 4,500/- x 3 = Rs. 13500/- towards loss of income. Since the claimant suffered grievous injuries in his leg, he can be awarded sum of Rs. 15,000/- towards loss of amenities of life, etc. In the facts and the circumstances of the case, the claimant can be awarded aforesaid amounts of Rs. 28,500/- in addition to what was awarded by the learned Tribunal. Accordingly, the amount of compensation is enhanced. Now, the total compensation comes to Rs. 50,717/- + 28,500/- = Rs. 79,217/-, which is rounded up to Rs. 79,300/-. On this amount, the appellant shall get the interest @ 7% per annum from the date of filing of the claim petition till the date of

payment. To that extent, the impugned judgment and award is liable to be modified.

The appeal is partly allowed. The judgment and award, dated 7-11-2003, is modified to the extent that the amount of compensation is enhanced to Rs. **79,300/-** (Rs. Seventy-nine thousand three hundred) instead of Rs. 50,717/-, awarded by the Tribunal. The appellant shall be entitled to interest on the compensation amount @ 7% per annum from the date of the filing of claim petition till the date of payment.

(B.S. Verma, J) **(Irshad Hussain, J.)**

RCP